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ABSTRACT

Issues of mandatory retirement for faculty are discussed. In 1978, the Age Discrimination in Employment Act was amended to raise the age of forced retirement to 70, but tenured college professors were exempted from the protections of the amendment. Arguments raised by advocates of forced retirement for tenured college professors include: the decline in the number of 18- to 21-year-olds will adversely affect college enrollments; older faculty are less productive than younger faculty; and administrators will be unable to implement affirmative action programs for minorities and women unless older faculty are forced to retire. The Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF) recently surveyed retired annuitants. It was found that 85 percent of participating colleges and universities ignored the exemption, and only 21 percent of annuitants had been forced to retire because they had reached the mandatory retirement age. TIAA-CREF found that male faculty/administrators who were retired had an average retirement income of $30,000, while female faculty/administrators were retired on an average income of only $20,000. The American Federation of Teachers and the National Education Association oppose the exemption for tenured faculty. (SW)

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AGE DISCRIMINATION ON CAMPUS

by Allen Calvin

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The problem of age discrimination was addressed by the states as long ago as 1903, when Colorado passed a law that no business "shall discharge any individual between the ages of 18 and 60 years solely and only on the basis of age." The federal government entered the field in statutory fashion when the Age Discrimination in Employment Act was passed in 1967. In 1975, Congress passed the Age Discrimination Act. After this law was passed, the word "age" was tacked onto almost every law in which discrimination was banned.

In all of this legislation, tenured professors were given the same protections as the rest of the general population. They were not singled out as a special class for whom protection against age discrimination did not apply.

In 1978, however, when Congress amended the Age Discrimination in Employment Act to raise the age of forced retirement to 70, tenured college professors were, for the first time, singled out as one of the few groups in our society not entitled to the same protections as the rest of the general population. This came about because the organizations representing higher education administrators asked that tenured college professors be exempt from the protections of the amendment; management, they argued, should have the right to force tenured professors to retire at 65. Although unsuccessful in the House, they did succeed in the Senate by a close floor vote of 48 to 45, and the exemption became part of the law. It lasted until July 1, 1982.

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Legislation currently before Congress would prohibit forced retirement at any age. Once again, the leaders of organizations representing higher education administrators have come forward asking for an exemption, this time for 15 years. The principal reason given in 1978 and again today for the exemption is that the decline in the number of 18- to 21-year-olds would have a devastating effect on college enrollments and that no other sector of the economy would experience such difficult demographic problems.

The "demographic disaster" argument may be tougher to make this time around. It just didn't happen during the past exemption. In fact, as Carol Frances noted in the *Bulletin* last December, overall enrollments rose 8% between 1979 and 1983. Of course, we may see some decline in the years ahead, but nothing on the order of 20-25%. Higher education is increasingly less dependent on youth enrollments and constantly finds new tasks and markets.

In any case, even if enrollments fell a more likely 8-10% over several years, does demography alone warrant denying college professors a civil right guaranteed to everyone else in our country?

The argument that "terrible consequences will befall us unless we have an exemption" also ignores relevant state experience. Three states have had laws on the books banning forced retirement for *anyone* who works in their state, including tenured faculty: Florida (Sec. 23.167, Florida Human Rights Act); Maine (Section 4572-4573, Maine Human Rights Act); and Utah (Section 34-35-36, Utah Anti-Discrimination Act). I have discussed these issues with officials in each of these states, and they assure me that they have encountered no difficulties. Wisconsin joined this group this year when Act 391 was passed. If age discrimination can be successfully ended for tenured faculty in these states—places where enrollments and finances have had their ups and downs—the argument for permitting it elsewhere is certainly called into question.

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In addition to arguments based on falling enrollments, there are two subsidiary arguments raised by advocates of forced retirement for tenured college professors.

The first is the "new blood" argument. It assumes that the older professor becomes "dead wood," that young faculty are productive and older faculty are not. The landmark study in this area, published by Wayne Dennis in 1966 in the *Journal of Gerontology*, examined the productiveness of scholars in the humanities, hard sciences and mathematics, and fine arts. Dennis found that scholars in the humanities were as productive in their 70's as in earlier decades, and were significantly more productive than they were in their 20's. Scientists and mathematicians showed some decline of productivity in their 70's, with mathematicians declining the least. Even with decline, the scientists and mathematicians were significantly more productive in their 70's than in their 20's. Persons in the fine arts showed a greater decline than the other two groups.

Since Dennis found that scholars remained as productive in their 70's as in any other decade and that scientists and mathematicians showed a decline but were still significantly more productive in their 70's than in their 20's, we would be more justified on the basis of these data in refusing to hire scholars, scientists, and mathematicians until they were 30 than we would be in forcing such individuals to retire at 70.

Different people obviously make their most significant contributions at varying ages. But it is worth noting that Copernicus was 70 when he published his first complete book, *De Revolutionibus Orbium Coelestium*. Verdi wrote *Falstaff* at age 79. Jung was 85 when he published *Man and his Symbols*. Certainly the world would have been much poorer had these individuals and thousands like them been forced to stop their work at an earlier age.

Another aspect of the "new blood" argument assumes that the older professor is no longer as "intelligent" as a younger colleague. Wilbert McKeachie dealt with that suspicion in the *AAHE Bulletin* last November:

When I was a graduate student, we believed that one hit an intellectual peak in the late teens or early twenties, and everything went downhill from there. This generalization was based upon early cross-sectional studies that failed to account for varying levels of education across generations. When better studies were made of individuals tested in youth and then 30 years later or more, the findings were quite different; scores increased *with additional age.*

In the last 10 or 20 years, a great many studies of intellectual changes with age have been made, and it appears that verbal intelligence — the abilities involving vocabulary and information — tends to increase to quite an old age. A professor may score higher at age 80 than he or she did at age 20.

. . . Abilities that we use and practice seem to be maintained rather well; those that are not practiced tend to drop off. Thus, individuals who are skilled in a particular area, such as a scholarly discipline, and have continued to work in that discipline, continue to improve or maintain a high level of ability.

What about the older professor's ability to teach? Does the "new blood" argument receive support in this area? McKeachie addresses this question as well:

With respect to teaching, our major sources of evidence are studies of student ratings of older and younger faculty. . . The general finding is that student ratings of teaching are lower for teachers in their first year or two of teaching, but relatively unrelated to age after that. Contrary to the common belief that faculty members stop trying once they've achieved tenure, teaching effectiveness seems to be maintained.

The second argument raised by the advocates of mandatory retirement for faculty is that unless older faculty are forced to retire, administrators will be unable to implement affirmative action programs for minorities and women.

How effective have such programs been while forced retirement is still permitted? The question was answered by Robert J. Menges and William H. Exum of Northwestern University in their recent article, "Barriers to the Progress of Women and Minority Faculty," in the March/April 1983 issue of *The Journal of Higher Education*:

Recent decades brought dramatic change to post-secondary education. Institutions experienced unprecedented growth, particularly following World War II, and student bodies moved toward greater gender, cultural, and racial inclusiveness.

In 1978 . . . tenured college professors were, for the first time, singled out as one of the few groups in our society not entitled to the same protections as the rest of the general population.

Does demography alone warrant denying college professors a civil right guaranteed to everyone else in our country?

Changes seen among students are not, however, mirrored in faculties. During those growth years, the proportion of women and minority faculty relative to all academics did not increase significantly. Further, absolute numbers remained small, particularly at senior ranks and when predominantly minority institutions are excluded.

Older tenured faculty are not the reason for this discouraging situation. Much closer to the truth are the remarks of Gerald J. Lieberman, vice-provost and dean of graduate studies at Stanford, quoted in the June 13, 1984, *Chronicle of Higher Education*:

. . . part of the problem is a national climate of "indifference and even suspicion" toward affirmative action. Many colleges have developed a "plateau mentality" that does nothing more than maintain present ratios of minorities and whites . . .

In 1978, administrators specifically asked for the faculty exemption so that progress could be made in affirmative action. What were the results? Nationwide data are not yet available, but the California Postsecondary Education Commission did conduct an exhaustive study of faculty employment for the years 1977-1981. The CPEC report notes:

. . . the representation of women and minorities in the tenure-track faculty, as well as in the tenured faculty, is particularly discouraging, and based on the trends of the past four years, little improvement is projected.

The report documents that little if any progress was achieved during these years in the area of faculty affirmative action for women and minorities.

Let me finish my point with this observation: to allow one type of discrimination, that based on age, to continue in the hope that it will lessen discrimination in other areas makes neither ethical nor practical sense.

An important question for present purposes is this: what were the effects of the exemption spliced onto the 1978 bill? In its 1982 Annual Report, TIAA-CREF noted the following:

Although the 1978 amendments . . . prohibited mandatory retirement prior to age 70 for most workers, one of its few exceptions permitted age-mandated retirement between ages 65 and 70 for tenured staff members of colleges and universities until July 1, 1982. Neither the exception nor its expiration in 1982 had much effect on retirement ages, since about 85% of participating institutions ignored the exception when they could have invoked it.

TIAA-CREF recently published the results of a survey of retired TIAA-CREF annuitants. A statistical report was prepared by James Mulanaphy, TIAA-CREF senior research officer, and a more descriptive analysis entitled *Voices of Experience* was prepared by Mario Milletti.

As one might expect from the fact that 85% of participating colleges and universities ignored the exemption, only 21% of annuitants had been forced to retire because they reached their employer's mandatory retirement age. Another 13% were forced to retire because of poor health, administrative decisions, and the like, with some of these reporting that their university or college had provided satisfactory arrangements. This was not the case for many, however, as noted in *Voices of Experience*:

AGE AT RETIREMENT BY FORMER OCCUPATION

Former Occupation	Percent Retiring Before Age 65	At Age 65	After Age 65	Average Age
College Faculty	27%	33%	40%	65
College Administration	40%	34%	26%	64
Other Professional/Technical	43%	30%	27%	64
Support Staff	51%	34%	15%	63.5
Independent School Faculty and Administrators	55%	30%	15%	63
All Retirees	39%	33%	28%	64

Source: "Voices of Experience" by Mario Milletti, TIAA/CREF, 1984, p. 21.

Most of the mandatorily-retired who did not want to retire were not [so] fortunate . . . Some of them are unhappy because they feel that their valuable skills are not being used. A 75-year-old former nursing educator is an example. "Is 65 such a magic number?" she writes. "You reach it and then your work days are ended. No one considers that a person hasn't changed. One doesn't become incapable overnight. Why can't we continue to serve? Because I dislike retirement so much, I haven't really enjoyed it. There

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aren't enough challenges." Adds a 78-year-old man who retired at age 70: "We have plenty of skills and vast stores of knowledge that can be of great value in the education of youth. And experience, judgment, compassion, and understanding." A similar complaint comes from a 71-year-old former educator in the performing arts, forced to retire at age 67 because of age: "I think the biggest drawback is retirement before the individual wants to--particularly in the arts, where one is working on a one-to-on basis. Great teachers have taught into their 90s."

When we look at the difference between male and female retirees in the TIAA-CREF survey, we can readily see that the issue of forced retirement is also a "women's issue." TIAA-CREF found that male faculty/administrators who were retired had an average retirement income of $30,000; female faculty/administrators were retired on an average income of only $20,000. A number of factors contribute to this, including the lower salaries women are paid while they are working, institutional policies, and the fact that women have received smaller pensions because on the average they live longer. (The U.S. Supreme Court in 1983 ruled that effective August 1, 1983, such discriminatory payments must cease, but the decision was not made retroactive, so for the foreseeable future women faculty members will continue to have markedly lower benefits than their male colleagues.)

Just as important, perhaps, from a woman's viewpoint, is the fact that when retirees are asked to come back to work, men fare better than women, according to the TIAA-CREF study. *Voices of Experience* notes:

Many retired workers are asked to come back to do the same job, or even a special job because of ability and experiences, yet do not receive equal base pay. This is more the case with women. Men fare better by calling such work "consulting" or some such designation. And according to a 67-year-old widow: "The institution where I taught had an age 65 mandatory retirement age. I thought, and still think, this was unfair because I was teaching effectively. . . . They hired me back at one-third my previous salary to do one-half my previous job. Clearly my work was not in question. This did blight my retirement.

To allow one type of discrimination, that based on age, to continue in the hope that it will lessen discrimination in other areas makes neither ethical nor practical sense.

[Another] argument raised by the advocates of mandatory retirement for faculty is that unless older faculty are forced to retire, administrators will be unable to implement affirmative action programs for minorities and women.

I recently received a letter from Professor Carolyn Landau of Marist College in Poughkeepsie, NY what she reports certainly supports the TIAA-CREF findings. Landau was forcibly retired by the college, then permitted to come back and teach one course plus earn a few hundred dollars more for curriculum development. She writes, "As a woman, I feel the oppressiveness of mandatory retirement very strongly. Like many other women, I had to withdraw from full-time employment to raise my family. I entered college teaching later in life than my male colleagues. Far from declining, I am now at the height of my teaching and scholarly skills. I am prepared to struggle to maintain my position."

Up to this point, administrators have been described as the chief proponents of exempting faculty from a general civil right. But not all administrators agree with the official position of their organizations. A May 4, 1983, article in the *Chronicle of Higher Education* makes the point well:

Another opponent of mandatory retirement is Thomas M. Stauffer, now chancellor of the University of Houston. Until last summer, he was director of external relations at the American Council on Education, one of the leading advocates—both in 1978 and today—of allowing colleges to force tenured professors to retire.

Mr. Stauffer's view, which he explained in a recent letter to the New York Times, *is that academe is inviting greater federal intervention by asking*

the government to exempt it from "fundamental national policy."

"American higher education is part of the American nation, not separate from its basic social trends," he wrote. "The American population is aging, and recognizing the value of older workers is just as significant as recognizing the value of women and minorities in the work place."

tion. This important caveat is often omitted when the AAUP's position is mentioned.

Even within the AAUP, some members take a very different position. Again I return to the *Chronicle* article:

. . . Bernard Roth, professor of mechanical engineering at Stanford University, is an example of someone who became "converted" by considering the individuals involved. He says he began fighting mandatory retirement after investigating the issue about five years ago as chairman of Stanford's AAUP chapter.

"My mind literally got blown," Mr. Roth recalls. "Every stereotype I had on the issue was wrong."

He says he discovered that instead of "doddering guys with yellow notes," many of the Stanford professors who were being forced to retire were "stars who were bringing in millions of dollars" that created jobs for young scholars.

Like Dr. Roth, I first became interested in the issue a few years ago when I was a dean and watched some of our finest professors forced to retire. The result too often was great personal pain to the individual and severe loss to the university. A study by Palmer and Patton reported by Felicetti in the Summer 1982 *Educational Record* notes that . . . "the least-productive academics and those with fewer activities outside their teaching appointments were more interested in retiring early." The best are most often those who wish to stay.

No one wants to see incompetent professors remain on the job, least of all his or her fellow professors. If there is a problem with tenure arrangements in a particular institution, that problem should be dealt with directly; incompetence can occur at any age. To give an exemption to higher education administrators so that they do not have to deal with the problem, but instead can simply wait it out until an individual reaches seventy, encourages procrastination and poor management.

Chancellor Stauffer, in his soon-to-appear article in the *AGB Report*'s "Uncapping the Retirement Age in Higher Education," puts the matter succinctly:

On current tenure policy, higher education cannot pass the buck to the Congress, asking for a bail out. If tenure policy must be changed, let higher education do it, not some government instrumentality.

Let me conclude as Senator Allan Cranston did on August 3rd, 1983, when he introduced his bill S. 1751 on mandatory retirement:

Mr. President, we are dealing with what is a basic civil right – the right to be judged on the basis of individual ability to perform a job. Employment discrimination on the basis of chronological age is just as invidious and unfair as discrimination on the basis of race or sex or religion or national origin that title VII of the Civil Rights Act prohibits. It has no place in our society. ■

TIAA-CREF found that male faculty administrators who were retired had an average retirement income of $30,000; female faculty administrators were retired on an average income of only $20,000.

Mr. Stauffer says he sympathizes with the A.C.E., which was flooded with letters from college presidents who opposed raising or uncapping the mandatory-retirement age for tenured professors. But he says he couldn't shake the feeling that their arguments were discriminatory.

"I thought what A.C.E. was doing in a constituent sense was correct – representing the people in higher-education land," he says. "But I thought it was wrong, pure and simple."

The AFT and the NEA have joined in opposition to an exemption for tenured faculty. The advocates of forced retirement claim that AAUP's national leadership supports their position. They cite an AAUP Committee A report approved in July, 1982. While noting that the question is a close one, Committee A did come out in favor of an exemption for tenured faculty. It further stated, however, that such an exemption should not be "purchased at a cost of the slow impoverishment of the retired faculty" and that some sort of indexing requirement must be made a condition for any possible exemp-

"The American population is aging, and recognizing the value of older workers is just as significant as recognizing the value of women and minorities in the work place."

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